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September 14, 2007

By e-filing

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

220253

Re: Finance Docket No 34890, *PYCO Industries, Inc. -- Feeder Line Application --
Lines of South Plains Switching, Ltd Co.*

220254

Finance Docket No. 34922, *Keokuk Junction Railway Co -- Feeder Line
Application -- Lines of South Plains Switching, Ltd Co*

Dear Mr. Williams

Hereby transmitted is a Reply In Opposition To Petition For Reconsideration In Finance
Docket No 34890, for filing with the Board in the above referenced matter

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Replicant

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BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. -- FEEDER)	
LINE APPLICATION -- LINES OF)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.)	NO. 34890
)	
KEOKUK JUNCTION RAILWAY CO. --)	
FEEDER LINE APPLICATION -- LINES)	FINANCE DOCKET
OF SOUTH PLAINS SWITCHING, LTD.)	NO. 34922
CO.)	

REPLY IN OPPOSITION TO PETITION FOR
RECONSIDERATION IN FINANCE DOCKET NO. 34890

SOUTH PLAINS SWITCHING, LTD. CO.
P O Box 64299
Lubbock, TX 79464-4299

Replicant

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Attorney for Replicant

DATE FILED: September 14, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

PYCO INDUSTRIES, INC. -- FEEDER)	
LINE APPLICATION -- LINES OF)	FINANCE DOCKET
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KEOKUK JUNCTION RAILWAY CO --)	
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OF SOUTH PLAINS SWITCHING, LTD)	NO. 34922
CO.)	

**REPLY IN OPPOSITION TO PETITION FOR
RECONSIDERATION IN FINANCE DOCKET NO. 34890**

Pursuant to 49 C.F.R. § 1104.13(a), SOUTH PLAINS SWITCHING, LTD. CO (SAW) hereby replies in opposition to a Petition for Reconsideration (Petition) filed by PYCO Industries, Inc (PYCO) on September 10, 2007 in Finance Docket No 34890 The PYCO filing is entitled "Petition for Reconsideration in F.D 34890 and 34922 and Stay in F.D. 34922 on Behalf of PYCO Industries, Inc."

The portion of the Petition filed in Finance Docket No. 34890 seeks reversal of the Board's denial of PYCO's motion to void certain transfers of property by SAW to Choo Choo Properties, Inc. (Choo Choo) that occurred between January 9, 2006 and May 5, 2006 (Motion). For the reasons explained hereinafter, the Board correctly denied that Motion.

The portion of the Petition and the Stay request filed in Finance Docket No 34922 seeks stay and reversal of the Board's grant of the feeder line application filed by Keokuk Junction

Railway Company (KJRY) Presumably, KJRY will respond in opposition to that portion of the Petition and to the Stay request.^{1/}

REPLY

The short but complete answer to the Petition in regard to property transfers is that the Board has now twice ruled that it has authority to void such transfers that occurred on or after the filing of PYCO's feeder line application on May 5, 2006, but not such transfers that occurred prior to that filing. There is no new argument to the contrary in the Petition. Accordingly, the Board should adhere to its settled ruling.

Thus, in a decision served August 3, 2006, the Board said (at 5):

... (W)e will void any transfers of any of SAW's rail properties, including the transfers made to Choo-Choo, that occurred after May 5, 2006 (filing of original feeder line application) . . .

Nevertheless, in October, 2006, PYCO filed a motion asking the Board to void transfers that occurred prior to May 5, 2006. That motion was denied in the Board's decision served August 31, 2007, at 7, viz:

Any pending motions not specifically discussed here have not been found to be meritorious and will be denied.

Having specifically ruled in August, 2006, that only transfers occurring on or after May 5, 2006 would be voided, the Board's catch-all ruling on the motion was legally sufficient; it was not necessary to specifically reiterate that ruling in the August, 2007 decision. In an analogous ruling in the August, 2007 decision, however, the Board reemphasized that its authority to void property transfers coincides with the commencement of proceedings before the Board, viz (at 7)

^{1/} PYCO has sought judicial review of the Board's decision in the foregoing respects in the U S Court of Appeals for the Fifth Circuit.

... After the commencement of these proceedings, however, SAW lacked authority to remove portions of the property subject to sale under the feeder line provisions ... (emphasis added).

It would be entirely unworkable if the Board were to void property transfers that occurred prior to the commencement of Board proceedings on the ground that the transferor should have known that proceedings before the Board would be commenced. A transferor would thereby be unjustly charged with knowledge of future events that only the Almighty possesses. No judicial decision has ever so held. That certainly was not the holding in *Railroad Ventures, Inc. v. STB*, 299 F.3d 523 (6th Cir. 2002), cited at page 7 of the August, 2007 decision. On the contrary, as acknowledged by the Board, the Court there held that at the point of commencing a proceeding by filing an abandonment petition, the abandoning rail line owner cannot reduce or diminish the rail line or the nature of the property interests associated with the line to be sold (at 552). That decision thus supports the Board's consistent rulings on the Motion

The Board's authority over property owned by a rail carrier is limited to property that is used or required by the rail carrier to provide rail service to shippers. The Board does not have authority, for example, over rail carrier property located outside of the carrier's operating right-of-way that is being used for non-rail purposes. Notwithstanding that a rail carrier owns such property, it is private property that is beyond the authority of the Board, not property devoted to public use that is subject to Board jurisdiction

The property at issue here is private property. It has been used for a water pipeline, an electric line, and overhead conveyance structure, and similar nonrail uses. That property is not used or required to provide rail service to shippers. The private nature of that property provides additional support for the Board's disclaimer of authority to void private transactions in relation to that property

PYCO erroneously contends at page 15 of the Petition that a transfer that encompasses the lead track to 84 Lumber would cut that shipper off from the national rail system because the deed to Choo Choo for that property did not reserve a rail easement for SAW. That would not be the case, however, because there is an operating agreement between Choo Choo and SAW that provides for SAW's right to provide rail service to 84 Lumber. SAW's right under that operating agreement would be assigned to the successful feeder line applicant. Contrary to PYCO's implication, therefore, there would be no loss of rail service resulting from any property transfer here under consideration

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Petition as it relates to Finance Docket No 34890 should be denied.

Respectfully submitted,

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DATE FILED: September 14, 2007

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2007, I served the foregoing document, Reply In Opposition To Petition For Reconsideration In Finance Docket No. 34890, by e-mail on the following

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